

Proposed changes to ICA regulatory definition

42 C.F.R. § 411.354(c)(2)(ii)

- (A) The referring physician (or immediate family member) receives aggregate compensation from the person or entity in the chain with which the physician (or immediate family member) has a direct financial relationship that varies with the volume or value of referrals or other business generated by the referring physician for the entity furnishing the DHS and the individual unit of compensation received by the physician (or immediate family member)—
- (1) Is not fair market value for items or services actually provided;
 - (2) ~~Includes~~ is calculated using a formula that includes the physician's referrals to the entity furnishing DHS designated health services as a variable, resulting in an increase or decrease in the ~~physician's (or immediate family member's) amount of~~ compensation that positively correlates with the number or value of the physician's referrals to the entity; or
 - (3) ~~Includes~~ is calculated using a formula that includes other business generated by the physician for the entity furnishing DHS designated health services as a variable, resulting in an increase or decrease in the ~~physician's (or immediate family member's) amount of~~ compensation per unit that positively correlates with the physician's generation of other business for the entity; or
 - (4) Is payment for anything other than services personally performed by the physician (or immediate family member).
- (B) For purposes of applying paragraph (c)(2)(ii)(A) of this section, ~~a:~~
- (1) A positive correlation between two variables exists when one variable decreases as the other variable decreases, or one variable increases as the other variable increases.
 - (2) The individual unit is:
 - (i) Time, where the compensation paid to the physician (or immediate family member) is based solely on the period of time during which the services are provided.
 - (ii) Service, where the compensation paid to the physician (or immediate family member) is based solely on the service provided.
 - (iii) Time, where the compensation paid to the physician (or immediate family member) is not based solely on the period of time during which a service is provided or based solely on the service provided.
 - (3) Services that are personally performed by a physician (or immediate family member) do not include services that are performed by any person other than the physician (or immediate family member), including, but not limited to, the referring physician's (or immediate family member's) employees, independent contractors, group practice members, or persons supervised by the physician (or the immediate family member).

- (C) If the financial relationship between the physician (or immediate family member) and the person or entity in the chain with which the referring physician (or immediate family member) has a direct financial relationship is an ownership or investment interest, the determination whether the aggregate compensation varies with the volume or value of referrals or other business generated by the referring physician for the entity furnishing the DHS will be measured by the nonownership or noninvestment interest closest to the referring physician (or immediate family member). (For example, if a referring physician has an ownership interest in company A, which owns company B, which has a compensation arrangement with company C, which has a compensation arrangement with entity D that furnishes DHS, we would look to the aggregate compensation between company B and company C for purposes of this paragraph (c)(2)(ii)).